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Supreme Court, U.S.
FILED

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NO.

IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON APPENDIXES J - K

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Date August 8th, 2001

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In The Supreme Court of the State of Illinois

IN THE INTEREST	)
OF:	)**Appeal from The Circuit**
LUELLA JONESON	) **Court of Cook County**
No 94JA1107	)
Minor-Respondent	)
Appellee	)
	) **Appellate No. 98-3336**
PEOPLE OF THE	)
STATE OF ILLINOIS	)
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) **Mary Mulhern,**
Respondent-Appellant	) **Judge Residing.**

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"Appendix J"

Alternative Prayer For Leave To Appeal And Appeal AS Of Right

Eugene J. Pursuant to Illinois Supreme Court Rule 315 (a), respectfully petitions this court for leave to appeal from the Judgement of the Appellate Court of Illinois 1st District to use its discretionary power and accept the appeal due to the need for supervisory authority, the finality of judgement of this case. (preponderance of the evidence that the petitioner was thwarted by the efforts of the caseworkers and others related to this case v, father was unable to make reasonable progress in his parenting skills for the return home of the children) and conflicts between jurisdiction interpretation (manifest weight of evidence measured by evaluator or caseworker reports vs manifest weight of the evidence from the progress made from the conditions that brought the case into care),

Petitioner also petitions under rule 317 petition for appeal as a matter of both right and discretion as several questions under the constitution of the United States and Illinois has arisen for the first time in the appellate court with respect to religion, children's and putative father's rights with respect to visitation and custody before and after adoption, and the mentally ill..

JURISDICTIONAL STATEMENT AMD JUDGEMENT BELOW

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene Joneson, unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella

Joneson were terminated. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998. The Notice of Appeal was filed on . On September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter.

The Appellate Court affirmed the trial court's decision and entered an order affirming the trial court decision on June 30th, 2000. After one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. On September 25th, 2000 an affidavit of intent to file was m ailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000.

POINTS RELIED UPON FOR REVERSAL

Under Illinois Supreme Court Rule 315 (a) the Illinois Supreme Court can use its discretionary power and accept the appeal due to the need for supervisory authority, the finality of judgement. And because of conflicts between jurisdiction interpretation of this case

In this case the finding of unfitness of the father Eugene Joneson was:

1. against the preponderance of the evidence, Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the

mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence. Countless examples are listed in the argument section of this petition.

2. not clear and convincing Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper, In this case substantial evidence has been presented that contradicts the conclusions that the State of Illinois Department of Children and Family Services agencies and hired evaluators have made.

3. against the manifest weight of the evidence in re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adaption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence.. In this case the manifest weight of the evidence presented by the state and guardian is basically that which the state has provided through court ordered evacuations and agency progress reports and not supported by actual case reports, court records and evidence presented in court from the day the case came into care as is the manifest weight of the evidence for the petitioner is.

4. in violation of Due Process in People vs. Fierer 529 N. E. 2d 972 constitutional errors must be show to be harmless beyond reasonable doubt in Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be

afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss 5. An abuse of discretion of the trial court judge in interest of L.L.S 577 NE 2d 1387 a reviewing court will not substitute its judgement for that of the circuit court unless an abuse of discretion is shown.

It was also not in the best interest of Luella Joneson to be adopted when her fathers rights to custody and visitation were lost due to termination of parental rights because all safeguards to protect her rights to her birth family which are also protected by the 14th amendment of the Constitution were not taken or provided by the Catholic Charities agency or the State of Illinois.

Supreme Court Rule 317 provides for appeals to the Supreme Court as a matter of right when a question under the Constitution of the United States and or Illinois has arisen for the first time in the Appellate Court.

This included:

1..her right to an interview with regard to her preferences of custodian or visitation in re Custody of Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says

that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by the parties and we believe the imperative " shall mandates that a record be made of the interview)Records of in chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties

2. " The agency Catholic Charities falsified their reports in order to present evidence that would support adoption due to their budget financial reasons This is evidenced by their falsely reporting that Luella was in a home of similar ethnic and cultural background, and a home of the same religion. This reporting continued even after Mr. Joneson had his daughter Luella baptized Methodist and is evidenced in all the case review reports from the beginning of this case until the end under placement listing (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) This all being done without regards to Luella's birth family religion her right to be brought up in that same religion, and ethnic and racial heritage. I n Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the

decision also in re Santos 105 N.Y. S. 2d 716 3 In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

3. Luella's right to visitation and custody by her birth father. In Interest of Otto B. 393 N.E. 2d 676 While a parent may be unfit to have custody of children, it does not automatically follow that such parent is unfit to remain the child's legal parent with attendant rights and privileges; on the other hand, the fact that parent makes an attempt to rehabilitate himself it does not necessarily preclude a finding of unfitness where such an attempt is unavailing Also in re Hurley (1976), 44 Ill. App. 3d 260, 2 Ill. Dec. 595 , 357 N.E. 2d 815)

UNDER Rule 315 1st Argument Finality of Decision the finding of unfitness of the father Eugene Joneson was ;

1. against the preponderance of the evidence, Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence.

In this case the appellate court simply refused to accept any evidence presented in the record as being able to support that Luella's caseworkers were bias in their efforts to complete her adoption and thus thwarted her father, Mr. Joneson, in his attempts for her return.. This even though substantial evidence was produced for review from the record.

The Substantial evidence that Mr. Joneson was thwarted by the efforts of the caseworkers is included the following:

(1). Telephone calls were never returned to his therapist for feedback and services. Tod Harrison, Mr. Joneson's therapist, also noted the non-cooperation of the Catholic Charities agency and testified about this in trial court. This was also evidenced by letters he wrote to Catholic Charities during this period of time.. Testimony and evidence indicate the caseworkers did not cooperate with Tod Harrison by either writing or returning phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R 65 ln 15-18 and Vol 3 of 9, TE 15 letter dated 11/6/96)

(2). At the beginning of Luella's case, caseworker services and help provided to the father were non-existent and unqualified unless father was to determine the services needed and than request them (Vol 5 of 9, TE 156 Case review 8/12/94 Task at 3 DCFS and CC workers will continue to offer services to parents should they request them.) This even though the service plan task objectives specifically state in every review that the

C.C. worker will provide parents with the appropriate referral for services recommended in the plan (vol 5 of 9, R 57 at 2)

. The only services available were those that existed from Luella' older sibling sister's being in care and intense psychotherapy by LCSW Tod Harrison because the caseworkers were not aware of what services to provide (Vol. 1 of 9, TE 66 and Vol 2 of 9, Gal ex. #3, 184 or TE 155) . Also services needed were not provided in a timely manner and could not be as case workers and evaluators alike had no training in analyzing parents for parenting skills. This was true NOT ONLY for Julie Yalowitz, (Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10) and Christine Foley, (Sr 1 of 2 1/8/99 C 109) caseworkers for Luella (Vol 5 of 6, R 221 ln 3-8), but the coordinator of the parenting assessment team, Kathy Pesek (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7). She was the states main evaluator along with the above mentioned caseworkers used as witnesses for determining the unfitness of the father Eugene Joneson. This evaluator was also responsible for conclusion of unfitness on hundreds of other parents evaluated by the parenting assessment team S. CT. Rule 236 All other circumstances of the making of the writing of the record including the lack of personal knowledge by the maker, may be shown to affect its weight, but shall not affect it's admissibility

What is even worse, Pesek's conclusion that nothing could be done to improve Mr. Joneson's parenting skills, was used by both the state and the guardian in their conclusion why no reasonable progress

could never be made in Mr. Joneson's parenting skills (Vol 5 of 6, R 229 ln 17- R 230 ln 5). In actuality, no progress was made because the evaluators and caseworkers had no training in evaluating parents for improving the skills of parents as evidenced above. . .(3) . Caseworkers provided the wrong services or none at all. The following includes just a few examples..

A. Because of confusion over volunteer parental stress group attendance and parenting classes by the caseworker Hector Rivera, H. R. testified that Mr. Joneson had been attending parenting skills classes for over 9 years and still was unable to improve in setting limits and the disciplining of his children at visits (Vol 1 of 6, R 137 ln 24- R 138 ln 1, R 145 ln 6-8, R 186 ln 14-22, R 206 ln 22-24- R 207 ln 1, R 210 ln 14-16). In reality Mr. Joneson had attended only one parenting class in ten years due to this error by the Catholic Charities agency (Vol 1 of 6, R 193 ln 13-16 and Vol 3 of 9, TE 176). This new substantial evidence reviewed by the trial court judge in a motion to vacate the unfitness judgement of Luella Joneson and obtained through the Cook County Commissioner's Office clearly indicates that parenting class services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been.(Vol 1 of 6, R 228 ln 18 - R 229 ln 4 and Sr 1 of 2, C 227) Even Mr. Joneson's testimony was that he had attended only one parenting class in ten years. (Vol 3 of 9, TE 176) This certainly could be viewed as another reason no progress could be seen in the parenting skills of Mr. Joneson Cormack v. Marshall 211 Ill. 519, 71 N. E. 1077. 671 I.R.A. 787

new conditions must have arisen to warrant the changing its prior custody determination

B. An evaluation update of the parenting assessment team to provide a measure of progress on the petitioner's ability to parent was ordered by the court. It was ordered on August 6th 1996 and given 30 days to complete (Vol 1 of 2, September 25th, C 126-127, and 142).. But It was not completed through Catholic Charities. Therefore there was no measure of progress that could be used through the parenting assessment team reports (Vol 4 of 6, R 120). IN Interest of Austin 378, N.E.2d 543 without referring to a prior status, current status and the process by which movement from one status to the other occurred, absence of evidence regarding the prior status would render a determination of "reasonable progress" meaningless.

The evaluation was done eventually by Doctor Marty Blackman who Mr. Joneson hired personally in 1997 (Vol 7 of 9, TE 146-154) It was considered inadequate by the state because it only measured progress of Mr. Joneson's mental and financial stability but did not provide any e vidence for the parenting skills progress because the children were not evaluated with it (Vol 5 of 6, R 230 ln 9-13) In Ballweg v. City of Springfield 114 Ill. 2d 107 499 N.E. 2d 1373, 102 Ill. Dec. 360 (1986) Evidentiary error, namely the improper admission or exclusion of evidence, is an important ground for a new trial when the error was prejudicial.

C. Dyadic therapy also was never offered to

Mr. Joneson by Catholic Charities although it was recommended by Amy Anson of Michael Reese Hospital (Vol 7 of 9, TE 196 Dispositions and Recommendations) This even though Mr. Joneson's therapist Tod Harrison repeatedly wrote letters asking for services and therapy so Mr. Joneson could have his children returned(Vol 8 of 9 TE 128 trusting a copy of this letter was delivered to C.C. about providers for family therapy 2/25/97, TE 115 Mr. Harrison requests a further conference to define planning and measurable goals in order to have the children returned to Mr. Joneson,. TE 131& 132 Please write me to let me know how I can better serve Mr. Joneson 11/27/95, TE 137 Please grant Mr. Joneson all the support and services to which you feel he is entitled to.)..

(4) Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption. Evidence given is ;

A. Luella came into the system because Ms. O'Neill gave birth at home (with father attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated this was done because they were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R 246 ln 15-18) This was also part of Judge Mulhern's judgement reading (Vol 2 of 6, R 211 ln 12-17)

As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in

court (Vol 1 of 2, 1/8/99 C 137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R 1031 ,ln 7-10), and DCFS records. (Vol 3 of 9, TE 194-210) and the defendant's own records (Vol 1 of 2, 1/8/99 C 132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern..

B. The caseworkers allege in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother. This court order has never been found in the record of Luella Joneson or been presented as evidence and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order but have never done so.(Vol 1 of 6, R 101, ln 21-24-R 1021-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice

C. The caseworkers and attorneys also bring up the issue of feeding adult cereal to Luella found in the initial intake investigation . Again the caseworkers do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R 233 ln 21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate (Vol 1 of 2, 3/5/99, C 174)

D Caseworker reports throughout Luella's case since Julie Yalowitz became a worker have indicated that Mr. Joneson threw the mother and Luella's older sister, Emily, out of the apartment and they had no where to go (Vol. 6 of 9,.TE 152) This contradicts the actual hearing because nothing of this nature was indicated or said (Vol 1 of 6, R 127 Emily O'NEILL was abandoned by the natural mother Frances O'Neill at a Catholic Charities office located at 721 North Lasalle. The staff there reported that mother had stated that she could not care for the child.).

E. Another example of how caseworkers passed on bias information about the father of Luella Joneson. is in the letters written when they were searching for Luella's mother. The letters were written as if the father was the only one they were searching for. In (Vol 3 of 9, TE 103) Since we do not know the whereabouts of the child's father, we are contacting all F. O'NEILL as in an attempt to locate the correct person.) The agency knew all the time where to find the

father of Luella all the time but really wanted to locate the mother (Vol 5 of 6, R 219 ln 15- R 220 ln 10).

F. Before Luella's case came in to care, caseworkers started indicating that there was a court order that father was not to be with the mother of the children (Vol 9 of 9, TE 31 1.at the time of Luella's birth, Mr. Joneson was court ordered not to be living with mother) But to this very day None has ever been presented this order as indicated by Judge Swzed (Vol 1 of 6, R 101, ln 21-24-R 102 ln 1-7)

G Testimony and reports by Julie Yalowitz also indicates a bias about a knife incident reported at a visit.. It was also withdrawn as a conclusion under cross examination (Vol 6 of 6, ln 6-23). Numerous other examples of these false reports are given in the appellant brief which included accusations of: (1) the children swimming in the lake of which evidence in the transcript record contradicts (Vol 1 of 6, R 177 ln 9-24- R 179) and (2) non evidenced statements by an evaluator that the father struck a two year(Vol 4 of 6, R 58 1-10) This the father denied and argued as here say in an appeal letter written on 5/18/96 (SR 1 of 2, App. stamp 3/5/99, C 155) and Vol 9 of 9, TE 99) and no case worker notes or recordings of the interview that contained this information were ever presented in court to validate the evaluators testimony

(5).. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker .On June 21, 1995 Jude Swzed ordered and granted in part the return of visits every week (Vol 1 of 2, 9/25/98 C 42) On November 9th, 1995 actual visits were

changed to once every two weeks. Coincidentally visitation anxiety continued throughout the summer for Luella Joneson because Julie Yalowitz, her caseworker would not and did not comply with the court order of every two weeks. In fact the visits remained at approximately once a month all summer long until Yalowitz returned them to at least twice a month but not every two weeks. In court Julie denies she had any problem in determining the number of visits (Vol 3 of 6, R 140 ln 12-14) The appellant Mr. Joneson also wrote a letter to Catholic Charities about June of 96 indicating that CC was not following the court order made by Judge Swzed and that unto that date they had missed at least 14 visits due to manipulating the visits to twice a month instead of every two weeks as ordered by court order (Vol 3 of 9, TE 25-26) This was also brought up in the appeal letter written on May 23, 1996 to DCFS (Vol 3 of 9, TE 67. Mr. Joneson asked for mediation with C.C. because Catholic Charities had constantly ignored the court order of visitation for Luella for every 2 weeks for the last 9 months (Vol 3 of 9, TE 64) (Also note the incomplete documenting of appellant's letter for the file of CC by Catholic Charities

(6)..Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson There are lots of good example of this. In the ACR Case Review for 11/7/94- 5/95. On one page it states that the CC worker will aid father in developing an appropriate care plan for Luella if requested to do so, and father will develop an appropriate care plan if she is returned home

(Vol 6 of 9, TE 97, 101) Father also will do the same thing in individual therapy with Tod Harrison as agreed upon in the letter sent by C.C. on what Mr. Joneson can do to have his children returned to him (Vol 6 of 9, TE 64, 4). But in his case review evaluation Mr. Joneson was given unsatisfactory progress with regards to this issue because he was discussing day care arrangements with Tod Harrison (Vol 6 of 9, R 134 bottom of page) This was a no win situation for Mr. Joneson as the caseworkers were oriented towards adoption..

Nothing could be done to convince CC that Mr. Joneson had the proper parenting skills. Even actions such as bringing flash cards was considered inappropriate and unsatisfactorily progress because Luella was not at an age where she could recognize words (Vol 3 of 6, R 45 ln 10-15)
or the game of hearts or using glitter to make a picture (Vol 3 of 6, R 80 ln 12-17) In re SJ 233 Ill. App. 3d at 121, 598 N.H. 2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.,

(7) .Bonding with Mr. Joneson and his daughters, Luella also had tow older sibling sisters in custody was hindered when letters written to his daughters were edited for content (SR 2 of 2, C 272)
(8). Previous case reviews before this case came into

care had been canceled for over three years not allowing the father feedback for improvement of his parenting skills as confirmed by the case notes of Mr, J's family counselor Minna Greene (Vol 5 of 9, YE 239 canceled 4/30/02, TE 243 /13/93, Vol 4 of 9, TE 23 held a case review without notifying, TE 34 no case reviews for 2 years, TE 42 the 5th case review canceled, TE 106 no notification of case reviews that were held in October 1990 and April of 1991) The state argues that even though services were offered Mr. Joneson was unable to make reasonable progress in his parenting skills. This completely contradicts the evidence which indicates the state never even tried to provided services for Mr. Joneson and if they did it would be services that did not apply to his parenting problems.

Under Rule 315 2nd argument on Finality of Decision and Conflicts between Jurisdiction Interpretation

The appellate court erred when it found the father of Luella Joneson unfit using evidence that the state had ordered for an evaluation and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months afterwards.

The father of Luella Joneson was found unfit and his parental rights were terminated for failure to make reasonable progress for the return home of Luella Joneson.. Reasonable progress should have been determined by an objective judgement The bench mark for measuring such progress is the situation which

triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the conditions in existence when custody was taken from the parents. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 598 N..E 2d 477. But instead the manifest weight of the evidence presented by the state was from reports ordered and created by the state. In 34 POF 2d 424 Child custody 34-407 annotation 10 Use of investigators In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that.

In this case the cause for Luella Joneson's removal was the possible risk of harm that could occur to Luella Joneson due to her parents mental illness or by Mr. Joneson living with Luella's mother who was not cooperating by going through services with DCFS for her mental illness diagnosis. But Mr. Joneson the defendant completed over 60 session of therapy through

Tod Harrison his therapist who was accepted by Catholic Charities as adequately prepared to counsel Mr. Joneson for the return home of Luella Joneson and also moved away from the mother of his children.

All charges of mental illness were dropped at pretrial hearing as reason for a unfitness argument (Vol 2 of 6, R 136) due to this substantial psychotherapy progress provided by Tod Harrison, LCS (SR 1 of 2, Jan. 8th, 1998, C 90-93) and validated by Doctor Marty Blackman ,psychologist (Vol 2 of 6, R 180), Doctor Childers ,psychiatrist (Vol 8 of 9, Te 137), and John Lietzau, family interventionist (SR 1 of 2 Jan, 8th, C 94)

Even so the state submitted as the basis of their evidence reports that indicate mental illness. This includes for the state 1. the entire parenting assessment team report cover to cover, 2. a clinical Services report done by doctor Reebe from down stairs (ordered by the court and completed by a state psychologist), and 3. a psychiatric evaluation of the father by Doctor Tepas (Vol 4 of 6, R 128 ln 17- R 129 ln 14). Again 34 POF 2d 424 Child custody 34-407 annotation 10 Use of investigators applies to this situation.

Also when mental illness of the father living with the mother was no longer an issue for the return of Luella Joneson Catholic Charities who was providing the only workers monitoring L.J.'s case due to a recent restructuring of the Department Of Children and Family Services, began to create objectives for parenting for Mr. Joneson and demanded strict compliance to them. In re L.L.S., 218 Ill. App 3d at 461, 577 N.E.2d at 1387 which erected the standard that progress is

measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. Many unsatisfactory progress reports were given even though Mr. Joneson had cooperated with all services demanded by Catholic Charities. In Interest of Drescher Ill. App. 415 N.E. 2d 641 The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness.

Other evidence done by evaluators appointed by state appointed agencies submitted by the state was a bonding assessment done by Amy Anson of Michael Reese Hospital (Vol 4 of 6, R 128, ln 7 - 16) and the parenting assessment team. State Law that is applicable to the weight of this evidence is read in Blakey v. Blakey 391 N.E. 2d 222 the inability to nurture or interact is not a proper statutory basis for the removal of children in this state. The children were originally take away because of the injurious environment and the parents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide

otherwise would allow the state to terminate parental rights for non-statutory reasons which were originally uncharged and which parents have no reason to know are possible bases for the removal of their children.

Where a parent has made substantial progress toward correcting the condition that led to the removal of the child, the lack of what DCFS deems satisfactory interaction between parent and child in not justification for the termination of parental rights. in re S.J. 598 N.E. 2d 477

In this case in interest of Luella Joneson, the lower courts have completely overlooked or misapprehended the evidence presented in the record which show progress has been made by correcting the conditions that existed when custody was taken from the parent Eugene Joneson. This includes the dropping of risk of harm charges due to mental illness, separation from the mother, and substantial improvement in parenting skills as indicated by the record.

. In Interest of A.T. 555 N 2d 409 it reads the first interpretation of unfitness must be based solely on parenting efforts or progress during the period beginning with adjudication and ending 12 months thereafter. The second interpretation must be based upon parenting efforts or progress made during the entire period between adjudication and filing of the termination petition. Under this latter interpretation, the length of the period is not limited by the statue.

The Catholic Charities caseworkers who supervised this case for almost all of the first year, Nora Rodriguez (Vol 1 of 9, R 91 Case Planning

Acknowledgment 11/7/94)and Laura Scott (Vol 1 of 9, R 43-46 Transfer Summary , R 63 Service plan evaluation of progress 6/13/94, R 92 Case Planning Acknowledgment 11/7/94) did not even testify in court as witnesses and neither did Terry Weck from the Department of Children and Family Services (Vol 1 of 9, R 50 Client Service Plan),

Luella Joneson's case came into care on 2/8/94. (Vol 1 of 9, R 18). Adjudication was on 3/28/95 where she was found abused due to injurious environment (Vol 1 of 2,1/8/99, C 26)
The dispositional order was on 6/21/95 where it was determined reasonable efforts had been made and appropriate services aimed at family intervention were unsuccessful. (Vol 1 of 2, C 38). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99 C 65) a little over one year after case was adjudicated..

The issue in argument is wether the appropriate services offered in the 12 month after adjudication and during the entire period between adjudication and the filing of the termination petition resulted in reasonable progress for the return home of Luella Joneson.

This includes the arguments that reasonable progress was made because; 1. the charges of mental illness were dropped , one of the main reasons the petitioner believes the case came into care(Vol 1 of 2, C 10). Thus mental illness was also one of the benchmarks from which to measure reasonable progress. 2 The father stopped seeing the mother of Luella Joneson as

she would no longer cooperate with DCFS in the return home of Luella and as it was recommended by Catholic Charities as a condition for reasonable progress for the return home of Luella Joneson. 3. Case aid reports and cross examination of witnesses indicated that the manifest weight of the evidence was not clear and convincing that Mr. Joneson was unfit to parent his children. 4 Father complied with all service plan objectives which included a. documented A.A. attendance and sponsorship b. over 100 hours of parenting classes to improve his parenting abilities In Interest of L.L.S 577 N.E. 2d 1375 Infants 156 the Standard by which progress is to be measured is parental compliance with court's directives, the service plan or both In interest of Drescher Ill. App. 415 N. E. 2d 641 Both the Guardian and the State testified that Mr. Joneson had undeniably made the efforts in following their final arguments (Vol 5 of 6 R 219 ln 21-R 220 ln 21), but the bottom line was that he could not parent because his efforts were unsuccessful.(Vol 5 of 6, R 220 ln 22-R 222 ln 22).

The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness. But the reverse has happened in the ruling of the trial court Judge Mulhern.

Rule 317. A parenting Assessment was used in court whose basis for selection was that of the parent being mentally ill and its original purpose was to provide recommendations for the father to improve his parenting skills (Vol 1 of 2, 9/25/98 C 80)

. The petitioner was also informed that this assessment or team would not be used to make decisions about custody but was only to determine 1.what the parent could do and cannot do about what could improve parenting problems and to help develop the best possible service plan to improve the parenting ability of the parent This is evidenced by the pamphlet given to the petitioner before the assessment (SR 1 of 2, 1/8/99 C 85). As these reports were used as evidence in court, this petitioner believes it is a violation of due process through fraud and is reversible error to invalidate this adoption Racine Fuel Co. v. Rawlins, 377 Ill. 375, 36 N.E. 2d 710 (1941)

It was objected to by Mr. Joneson at the Best interest hearing in trial court on 4/17/ 98 as to its constitutionality (Vol 1 of 1, Nov. 17th, 1998 R 27 line 14-17).. It is a violation of the 14th amendment because it is discriminating against a certain class of parents with regards to mental illness. In People vs. Fierer 529 N.E. 2d 972. It reads Constitutional errors must be shown to be harmless beyond reasonable doubt. This petitioner believe that this has not been proven in this case.

Governor Edgar of the State of Illinois mandated that a commission to assess the parents of parents suspected of mental illness and the parenting assessment team was a result of this commission. (Vol 7 of 9, R 155) Even though the father did not meet the requirements for being severely ill, being hospitalized for over 5 years, the report was still done and included and concentrated on this perspective of mental illness. This is evidenced by the assessment made by Laura Miller,

psychiatrist , and Teresa Jacobson, psychologist.(Vol 2 of 9 , R 159).

Also the main coordinator of the Parenting Assessment Team, Kathy Peek, who was a child development specialist had 1.no prior or previous training at evaluating the parenting capabilities of parents for the improvement of their parenting skills (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7), 2. No experience for evaluating fathers (SR 1 of 2, C 84-88 The agency doing the evaluation The Thresholds for Mothers Project only provided services for women) and 3. No training in evaluating emotionally disturbed adults (Vol 4 of 6, R 93) In her case report summary and in trial court testimony
until she actually started doing the evaluations agency was

Mr. Harrison, Mr. Joneson's therapist and the head supervisor of the Community Health Center testified at the unfitness hearing that it was not the standard of the medical health industry that nothing could be done to help a patient, but this is exactly what the P. A.T. did. As mentioned earlier this probably had to do with the inexperience of the coordinator Kathy Peek at analyzing parents with parenting skills.

Supreme Court Rule 317 provides for appeals to the Supreme Court as a matter of right when a question under the Constitution of the United States and or Illinois has arisen for the first time in the Appellate Court Under Rule 317

The appellate court erred in affirming the trial court's decision to terminate parental right. One of the

reasons being that there was no recorded interview made or presented in court with regards to Luella Joneson's wishes In 3 Ill Fam Law & Practice annotation 9:367 Practice Commentary The law is now that the custody and visitation sections in the Illinois Marriage and Dissolution of Marriage Act apply to parentage cases. In re Marriage of Ronald R. Slavenas 487 N.E 2d 739 Infants Record of in-chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by parties. At 741 (3,4) It was therefore error to conduct the interview without making a record In Lear v. Robertson 463 U.S. 248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights. Also in 3 Illinois Family Law and Practice reads at annotation 9.322 on interviews that the court may interview the child in chambers to ascertain the child's wishes as to his or her custodian. If counsel desires the court to cover any specific areas in the interview or ask any questions, they should submit those in writing and have then on record. Counsel must be present at the interview unless otherwise agreed upon by the parties, and the court must provide a court reporter who will make a complete record of the interview instantaneously to be part of the record in the case. The requirement that the interview of a child be recorded cannot be waived by the parties Petitioner interprets these statues as indicating that it was a violation of due process by not recording Luella Joneson's wishes with regards to

custody and visitation for the court.

The department of Children and family Services also should have considered important racial, ethnic and religious differences between her birth family's ethnic and cultural background and the prospective adoptive parents as is legislated for Illinois Department of Children and Family Services' Policy and thus as determined by legislative law.

The trial court Judge even admitted herself that there is no case law that indicates that a parent can have custody or visitation rights after their children are adopted (Vol 1 of 1, R 22 ln 119), but state statues indicate differently.

Conclusion

The court should accept this case for review because it conflicts with the basic rules and statues for determining the finding of unfitness of a parent, Especially determining wether the manifest weight of the evidence should be measured by the evidence produced by the state through its evaluators and caseworkers reports or the progress made from the conditions that brought the case into care). Also to determine the finality of judgement of the state, if the state in its efforts to cut down the over bloated system of foster care actually thwarted the efforts of the father in the return of his daughter Luella Joneson. In this case. did the preponderance of the evidence show that the petitioner was thwarted by the efforts of the caseworkers and others related to this case. This is largely due to the new social policy to cut down state caseloads for monetary reasons, and caseworker personal error and the loss of

representation of the department of Children and family services to provide caseworkers to monitor the services of Catholic Charities for the same financial reasons .. This virtually puts the determination factors for unfitness of the parents of children accused of abuse and neglect soles in the hands of a private agency and whoever they hire. This case is a prime example of how this abuse occurs with countless examples of how this happens.

Also several important basic violations of due process and 14th amendment rights provided by the United States Constitution for all parents have been violated with respect to: 1.religion.... adoption across religious faiths not condoned by parent 2. mental health.... use of report based on mental health that was fraudulently represented as being used to determine what could be done to improve parenting skills 3. visitation and custody with regards to illegitimate children's rights...no court recorded interview was made of the petitioner's daughter Luella Joneson with regards to her preferences of custody and visitation rights and 4 putative father's rights before and after adoption has been finalized....especially with regards to visitation and legal custody.

This undeniably requires the Supreme court of Illinois's supervisory authority. This especially since the act of adoption severs all ties with the birth parent and child and under current legislation offers no alternatives to this tragic conclusion. In this case, further legislation is needed that will allow the return of a child on a joint custody basis when there has been no evidence proven of severe mental , emotionnal or physical abuse of child

by the parent only a lack of parenting skills that the untrained social system is uncomfortable with for the children's return. This occurring when substantial efforts had been made to improve these skills by the parent by complete participation in DCFS plans and visitation of the children .Simply stated further legislation needs to be developed on the lines with that in Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Petitioner requests the court to review as further legislation is needed to clarify what conditions under the above statues will apply to this case. In Lear v. Robertson 463 U.S. 248, 261-262 (1983) Clearly fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights.

Again this case should also be considered under the 14th amendment as a constitutional right for putative parents with respect to custody and visitation, Especially when they are found unfit due to unreasonable progress in parenting skills and have maintained contact with their children and there is no dispute that reasonable efforts had been made for the for the return of their children.

Petitioner prays that this Court grant his request for leave to appeal

Respectfully submitted,

By _____
petitioner

90401244

In The Supreme Court of the State of Illinois

IN THE INTEREST)
OF:)Appeal from The Circuit
LUELLA JONESON) Court of Cook County
No 94JA1107)
Minor-Respondent)
Appellee)

) Appellate No. 98-3336

PEOPLE OF THE)
STATE OF ILLINOIS)
Petitioner-Appellee)
V.)
)
EUGENE JONESON) Mary Mulhern,
Respondent-Appellant) Judge Residing.

Motion For reconsideration of Motion For denying Leave To Appeal

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Chicago, Illinois 60647
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"Appendix K"

MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF THE ORDER FOR DENYING PETITION TO LEAVE TO APPEAL

Eugene J. birth father acting pro se, respectfully motions the Illinois Supreme Court for motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal.

JURISDICTIONAL STATEMENT AND JUDGEMENT BELOW

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene Joneson, unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella Joneson were terminated. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998. The Notice of Appeal was filed on . On September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter.

The Appellate Court affirmed the trial court's decision and entered an order affirming the trial court decision on June 30th, 2000. After one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. On September 25th, 2000 an affidavit of intent to file was mailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000. The petition for leave to appeal was filed timely on that date.

The petition for leave to appeal was denied on January 29th, 2001. A motion for extension of time to file motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal was filed on February 9th, 2001. The extension of time was granted and the due date to file motion for leave to file motion for reconsideration of the order denying petition for leave to appeal was ordered for March 1st, 2001 and was timely filed on March 1st, 2001.

POINTS RELIED UPON FOR REVERSAL FOR MOTION FOR RECONSIDERATION OF THE ORDER DENYING PETITION FOR LEAVE TO APPEAL

UNDER RULE 317

1. Factors balancing the nature of due process due parental rights termination were in direct violation of the fourteenth amendment and inconsiderate of grievous loss. Mathews v. Eldridge 424 U.S., at 343, 96 S. Ct. At 893 & 903, 47 L. Ed. 2d 18 The nature of the process due parental rights termination proceedings turns on balancing three factors: the private interests affected by the proceedings, the risk of error created by the state's chosen procedure: and the countervailing governmental interest supporting use of the challenge of the procedure The fourteenth amendment Article 14, Section 1 Due Process and Equal Protection All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No

state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.
Santosky v. Kramer 102 S. Ct. 1388 m(1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be ' condemned to suffer grievous loss'"

These constitutional violations include

A. a parenting assessment that was used that selects parents for evaluation of parenting skills solely on the reason of wether they have been diagnosed as mentally ill in the past. Psychologicals and psychiatric reports were very negative and supported the finding of unfitness based on a mental illness or impairment of the father Eugene Joneson. People v. Fierer 529 Ne2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt

Adding even more in violation of due process is that none of the evaluators or social workers involved in the case of Luella Joneson had any previous training in assessing parents for parenting skills. What knowledge they had was learned from the experience of the job which all had recently started. But their testimonies and reports provided the basis and manifest weight of the evidence for the finding of unfitness and termination of parental rights of the birth father In 34 POF 2d 424 Child Custody at 34-407 annot. 10 Use of investigators

In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that. In re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adaption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence

B.Unsupported adoption by the birth father across religious lines. (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) The birth father was Methodist and the adoptive parents were Catholic. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y. S. 2d 716 3 In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to

another religion could not erase (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

C. Visitation and custody rules for putative father were denied by the trial court judge even though reinstatement of visitation , a stay of judgement, was motioned for by the birth father in post trial motions before the notice of appeal was filed. This was solely for jurisdiction reasons which petitioner argues is an erroneous ruling

Also. Luella J's right to an interview with regard to her preferences of custodian or visitation was overlooked by the trial court judge. In re Custody of Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by the parties and we believe the imperative " shall mandates that a record be made of the interview) Records of in chambers interview of child to

ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties

D. The trial court judge also abused her discretion by not allowing a continuance of the best interest hearing and not allowing new substantial evidence and testimony to be presented or heard in post trial motions which indicated it was in Luella's best interest to maintain contact with her father.

In Hearson v. Graudine 87 Ill 115, it reads that a court should not refuse a continuance where the ends of justice clearly require it and an abuse of discretion in doing so will justify a reversal. And in Czyzewski v.Gleeson 364 NE 2d at 560 It is not necessary for the reviewing court to determine, as a matter of law, that the trial court exceeded or abused its discretion, but only to resolve wether justice is being done. In Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss

In Lehr v. Robertson 463 U.S.248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights:

Under Rule 315

2. The Preponderance of the evidence indicated it was not in the best interest of Luella Joneson to be permanently separated from her father permanently through adoption and no compelling evidence presented

was clear and convincing In Cebrzynski v. Cebrzynski (1978), 63 Ill. App.3d 66,72,19 Ill. Dec. 841,379 N.E. 2d 713) in a custody dispute between a natural parent and a third person, the latter must demonstrate a " compelling reason" why the natural parent should not be granted custody of a child. In Re Custody of Krause cite as, Ill. App., 444 N.E. 2d 647 Six factors for custody determination subsection (1) thereof states that the wishes of the child's parent or parents as to his custody is one of the relevant factors., subsection (2) directs the court to consider the wishes of the child as to his custodian, subsection(3) is the interaction and interrelationship of the child with his parent or parents, siblings, and any other person who may significantly affect his best interest, subsection (4) lists the child's adjustment to his home, school and community as a relevant factor for consideration., subsection (5) directs the court to consider the mental and physical health of all the individuals involved, subsection (6) allegations or threats of physical violence.

The trial court has completely ignored these factors in determining the best interests of Luella Joneson. No interview had been made of Luella Joneson with regards to her wishes with regards to custody. Luella's adoptive father was not of the same race as Luella or Luella's father. The adoptive parents were not of the same religion as Luella was baptized in or her father was raised with. Adjustment to the community was considered residing in a day care center because both of Luella's parents had to work in order to afford her upbringing..

Since the above factors were ignored by the trial court along with the efforts of the Catholic Charities agency to prevent the return of Luella, special attention for this case should be given to subsection (5) which directs the court to consider the mental and physical health of all the individuals involved. The father of Luella Joneson believes that if the order is not granted to reverse the adoption or retrial granted at least some type of open adoption should be allowed to remedy any damage caused by the current separation during litigation. In Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Petitioner requests the court to review as further interpretation is needed to clarify what conditions under the above statues will apply in this case.

3. Terminating parental rights solely for the reason of failure to make reasonable progress when parent complied with all service requests demanded by Catholic Charities Agency but was unable to convince them there would be a safe home return for Luella Joneson was not clear and convincing. In re Woods (1st Dist 1977,54 Ill.App.3d 729, 735, 12 Ill.Dec. 342, 369 N.E.2d1356).The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness. In re Taylor (1st dist. 1975) 80 Ill.aPP.3D 906, 909, 334N.E.2D 194 Traditionally, one of the obstacles that

could thwart a parent's actual visitation of his child included the misconduct of Department employees. This is especially true in the case of Luella Joneson because there is substantial evidence that Mr. Joneson's efforts for the return of Luella Joneson were thwarted by the efforts of the caseworkers. In Ill. Revised Statues Domestic Relations 40 @ 1501 and In re Bentsen v. Bentsen 412 N. E. 2d 1167 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be by a preponderance of the evidence These impediments included: (1). Telephone calls were never returned to his therapist for feedback and services Vol 5 of 6, R 65 ln 15-18 and Vol 3 of 9, TE 15 letter dated 11/6/96). (2). At the beginning of Luella's case, caseworker services and help provided to the father were non- existent and unqualified unless father was to determine the services needed and than request them (Vol 5 of 9, TE 156 Case review 8/12/94 Task at 3 DCFS and CC workers will continue to offer services to parents should they request them.) (vol 5 of 9, R 57 at 2), .(3) . Caseworkers provided the wrong services or none at all because of inadequate training(Vol. 1 of 9, TE 66 and Vol 2 of 9, Gal ex. #3, 184 or TE 155)(Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10)(Sr 1 of 2 1/8/99 C 109) (Vol 5 of 6, R 221 ln 3-8),(Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7).(4) Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption.(Vol 4 of 6, R 98 ln 20-24, R 99

ln 1-7).(Vol 3 of 9, TE 176), (5).. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker, (6)..Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson, (7) .Bonding with Mr. Joneson and his daughters, Luella also had two older sibling sisters in custody, was hindered when letters written to his daughters were edited for content
(8). Previous case reviews before this case came into care had been canceled for over three years not allowing the father feedback for improvement of his parenting skills as confirmed by the case notes of Mr, J's family counselor Minna Greene

There is also conflict in jurisdictional interpretation of the determination of unfitness statues. This being the benchmark for progress of the 1st district versus strict compliance to Catholic Charities directives and court orders The appellate court erred when it found the father of Luella Joneson unfit using evidence that the state had ordered for an evaluation and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months afterwards.

The father of Luella Joneson was found unfit and his parental rights were terminated for failure to make reasonable progress for the return home of Luella Joneson.. Reasonable progress should have been determined by an objective judgement The bench mark for measuring such progress is the situation which

triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the conditions in existence when custody was taken from the parents. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 233 Ill.App.3d at 121, 598 N..E 2d 477 The ultimate issue is the reasonableness of the progress that the parent has made, in light of all the circumstances in " moving beyond the parental deficiencies that led to initial removal of the child.

But instead the manifest weight of the evidence presented by the state was from reports ordered and created by the state evaluators and caseworkers.

In re L.L.S., 218 Ill. App 3d at 461, 577 N.E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.

Many unsatisfactory progress reports were

given even though Mr. Joneson had cooperated with all services demanded by Catholic Charities. In Interest of Drescher Ill. App. 415 N.E. 2d 641 The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness.

The father Eugene J., petitioner pro se, again pleads with the court to reconsider the order denying the petition for leave to appeal as serious violations of due process and equal protection have occurred in the Illinois judicial system, there is a need for review of the finality of the judgement of unfitness and best interest and there is also conflict in jurisdictional interpretation of the determination of unfitness statues. This being the benchmark for progress of the 1st district versus 4th district's strict compliance to court directives and DCFS service plans with Catholic Charities as their representative agency.

Respectfully submitted,

_____

petitioner